

ORDINANCE NO. 08-88

ORDINANCE GRANTING A
CONDITIONAL USE PERMIT (CUP)
AND GRANTING A SPECIAL USE
PERMIT (SUP) TO ALLOW A CHILD
DAY CARE CENTER WITH A
CAPACITY OF UP TO 240 CHILDREN
ON PROPERTY ZONED R-1 (ONE
FAMILY DISTRICT). **PROPERTY
LOCATED AT 21 EAST 59 STREET,
HIALEAH, FLORIDA.** REPEALING
ALL ORDINANCES OR PARTS OF
ORDINANCES IN CONFLICT
HEREWITH; PROVIDING PENALTIES
FOR VIOLATION HEREOF; PROVIDING
FOR A SEVERABILITY CLAUSE; AND
PROVIDING FOR AN EFFECTIVE
DATE.

WHEREAS, the Planning and Zoning Board at its meeting of September 24, 2008, recommended approval of this ordinance.

WHEREAS, the petitioner proffered a declaration of restrictive covenants providing that (1) for the first year of operation of the child day care facility from the date of the issuance of the certificate of occupancy or the first day of operations in the new facility, the petitioner will limit the maximum capacity of children to 190 children; (2) providing for an onsite traffic control person at peak traffic hours to facilitate the proper flow of traffic to and from the day care facility, and (3) providing that after the first year of operations, the petitioner may increase the maximum capacity of children up to and including 240 children by application to and approval of the Growth Management Advisory Committee at a public meeting, upon individual mailed notice to property owners within the 500-foot radius of the subject property, of which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The foregoing facts and recitations contained in the preamble to this ordinance is hereby adopted and incorporated as if fully set forth herein.

Section 1.1: The below-described property is hereby granted a conditional use permit (CUP) and a special use permit (SUP) to allow a child day care facility with a capacity of up to 240 children on property zoned R-1 (One Family District). The

property is located at 21 East 59 Street, Hialeah, Miami-Dade County, Florida and legally described as follows:

LOTS 32 THROUGH AND INCLUDING 40, IN BLOCK 4, OF PALM AVENUE HIGHLANDS, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 15, PAGE 35, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, LESS THE 5 FOOT-ALLEY LYING NORTH, WEST, AND EAST OF SAID LOTS, VACATED FOR PUBLIC USE PURSUANT TO HIALEAH, FLA. ORDINANCE 94-104 (NOV. 15, 1994).

Section 2: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 3: Penalties.

Every person violating any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 4: Additional Penalties upon Violation of Conditions of Use.

Any change of the terms and conditions of the use identified in this ordinance and as provided in the Declaration of Restrictive Covenants, if submitted, will cause a revocation of the Special Use Permit and of the city occupational license issued in connection herewith and the property shall revert to the zoning classification without the benefit of the special use.

Section 5: Severability Clause.

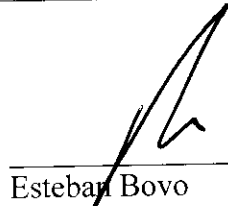
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

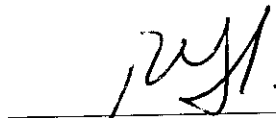
PASSED and ADOPTED this 28th day of October, 2008.

THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



Esteban Bovo
Council President


Attest:

Approved on this 4 day of November, 2008.

Rafael E. Granado, City Clerk

Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

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Ordinance was adopted by a 6-0-1 vote with Councilmembers Bovo, Caragol, Garcia-Martinez, Gonzalez, Hernandez, and Yedra voting "Yes", and Councilmember Casals-Muñoz abstained.

INDEMNITY AND HOLD HARMLESS AGREEMENT

This Indemnity and Hold Harmless Agreement is made as of 15 day of December, 2008 by the City of Hialeah, a municipal corporation organized and existing under and by virtue of the laws of the State of Florida, whose principal place of businesses is located at 501 Palm Avenue, Hialeah, Florida 33010 ("City"), Jonaiky Miranda, 21 East 59th Street, Hialeah, Florida 33013.

WITNESSETH:

WHEREAS, Jonaiky Miranda is the owner of property located at 21 East 59th Street, Hialeah, Florida 33013 ("Property Owner") and the property is zoned R-1 (Single Family District) with a land use classification of Major Institutions; and

WHEREAS, Property Owner presently operates a day care facility as a nonconforming use; and

WHEREAS, Property Owner wishes to make improvements on the property to accommodate a class size of up to 190 children; and

WHEREAS, Property Owner agrees to apply immediately for a Conditional Use Permit and a Special Use Permit to accommodate the day care facility and if approved, to obtain building permits for all improvements to be made as represented in the site plan or in substantial compliance therewith; and

WHEREAS, Property Owner shall obtain a permit to place a trailer on the property to accommodate its business and construction needs, including to accommodate the occupancy needs of its present enrolled class; and

WHEREAS, Property Owner recognizes that time is of the essence as to each of her obligations in this agreement; and

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WHEREAS, Property Owner will use her diligent and best effort to finalize the construction of all improvements no later than six months from the date the ordinance granting the Conditional Use Permit and Special Use Permit is approved; and

WHEREAS, Property Owner shall restore the property to the condition existing at the time of this agreement, including the removal of the temporary trailer, with all expenses borne by Property Owner and without regard to the interruption or other adverse impact on the operation of her business, if the City denies the required or related building permits or if the Property Owner fails to complete the construction of all improvements within the timeframe agreed; and

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties understand and agree to the following under the subject terms and conditions:

1. *Recitals.* Each of the foregoing recitations is true and correct and is incorporated herein by this reference and made a part hereof for all purposes.

2. The undersigned represents, warrants and agrees to indemnify, defend and hold the City of Hialeah, its successors and assigns, officers, public officials, employees, attorneys, agents and representatives, harmless from any liability, damage or claim of any nature or kind arising out of or in connection with the rezoning application and to further indemnify and hold the City of Hialeah, its successors and assigns, officers, public officials, employees, attorneys, agents and representatives, harmless from any and all losses, damages, liability and expense (including, but not limited to, investigation, litigation, settlement, court costs and attorneys' fees at the trial, administrative or appellate levels), directly or indirectly arising out of or in connection with the any building permits and occupational licenses issued while the rezoning application is pending or in connection with this agreement.

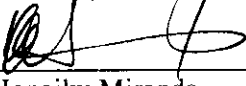
3. The Property Owner agrees to restore the property to its original condition within 30 days if the City denies the variance application or if the Property Owner fails to complete the construction of all improvements within the timeframe agreed.

IN WITNESS WHEREOF, the parties hereto as of the day and year first above written have executed this Indemnity and Hold Harmless Agreement.

Signed, sealed and delivered
in the presence of:

PROPERTY OWNER:

21 East 59 Street
Hialeah, Florida 33013

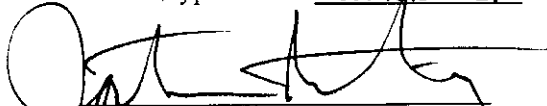
 12/15/08
Jonaiky Miranda Date

Witness as to both owners:



Witness

Printed/typed name: Patricia Craiken



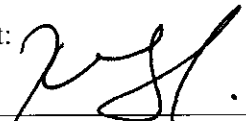
Witness

Printed/typed name: Jonaiky Miranda

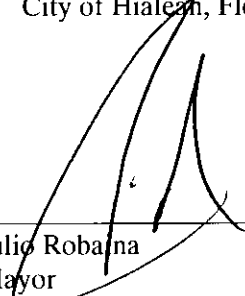
CITY OF HIALEAH, FLORIDA
501 Palm Avenue, 4th Floor
P.O. Box 11-0040
Hialeah, Florida 33011-0040

Authorized signature on behalf of
City of Hialeah, Florida

Attest:

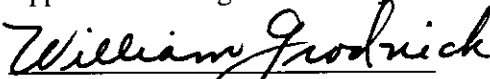

Rafael E. Granado
City Clerk

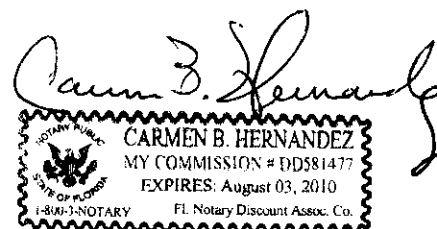
By:

 12/15/08
Julio Robaina Date
Mayor

(SEAL)

Approved as to legal sufficiency and as to form:


William M. Grodnick, City Attorney





CFN 2008R0911979
OR Bk 26644 Pgs 4005 - 4006; (2pgs)
RECORDED 11/10/2008 08:06:49
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

Prepared by and return to:
City of Hialeah
Planning Division
501 Palm Avenue, Second Floor
Hialeah, FL 33010

**DECLARATION OF RESTRICTIVE COVENANTS
(Individual)**

(I) (WE), Jonaiky Miranda

Being the owner(s) of lands described herein:

Lots 32 to 40, Inclusive, Block 4, and 5-foot alley lying North and West and East and adjacent, closed per Ordinance 94-104, Palm Avenue Highlands, according to the plat thereof, as recorded in Plat Book 15, at Page 35, of the Public Records of Miami-Dade County, Florida.

The street property address is 21 East 59 Street, Hialeah, Florida 33013

The folio number is 04-2131-026-0750

make the following Declaration of Restrictive covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida.

In connection therewith, the undersigned covenants, represents and agrees as follows:

1. The premises located at 21 East 59 Street, Hialeah, Florida, proffered the following: For the first year of operation of the child day care facility from the date of the issuance of the certificate of occupancy or the first day of operations in the new facility, the petitioner will limit the maximum capacity of children to 190. Provide for an onsite traffic control person at peak traffic hours to facilitate the proper flow of traffic to and from the day care facility, and a 6-foot hedge along East 59 Street to reduce the noise impact to the neighboring properties.
Provide that after the first year of operation, the petitioner may increase the maximum capacity of children up to and including 240 children by application to and approval of the Growth Management Advisory Committee at a public meeting, upon providing an updated list and mailing labels of the property owners within the 500-foot radius of the subject property and an updated Traffic Impact Study will be submitted by the applicant
2. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property and shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in Hialeah Charter.
3. Where construction has occurred on said property described herein, pursuant to a permit issued by the City of Hialeah, and inspection made and approval of occupancy given by the City, the same shall create a conclusive presumption that the improvements thus constructed comply with the intent and spirit of the restrictions referenced herein and this Declaration of Restrictive Covenants shall not be construed as clouding title of any of said property on which such development has occurred.

DECLARATION OF RESTRICTIVE COVENANTS
(Individual)

OR BK 26644 PG 4006
LAST PAGE

IN WITNESS WHEREOF, (I) we have hereunto set out hands and seals at
501, Palm Avenue this 4th day of November, 2008.
(location)

Signed, sealed and delivered in the
presence of:

Isabel Campuzano
Witness:
Typed/Printed Name ISABEL CAMPUZANO

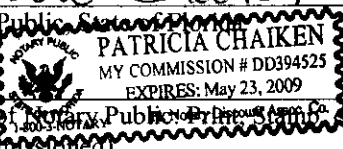
Miriam Corpe
Witness:
Typed/Printed Name: MIRIAM CORPE

[Signature]
Owner
Jonaiky Miranda
Typed/Printed Name: Jonaiky Miranda

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that on this 4th day of November 2008, before me, an officer duly
authorized in the State of Florida and in County of Miami-Dade, to take acknowledgments, personally
appeared Jonaiky Miranda and N/A To me known to be the
person(s) described herein and who executed the foregoing instrument, and he/she/they acknowledged before
me, under oath, that he/she/they executed same.

WITNESS my hand and official seal this 4 day of November, 2008

Patricia Chaiken
Notary Public, State of Florida

(Name of Notary Public, Print Name, or Type
as Commissioned)

- ☐ Personally known to me, or
☒ Produced identification:

FDL# M653-420-75-879-0 EXP: 10-19-11
Identification produced:

- ☒ Did take an oath
☐ Did NOT take an oath